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Supreme Court, U.S.
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No.____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

CHEROKEE INSURANCE COMPANY,
Petitioner

v.

ROBERT M. RIEDER,
Respondent

and

GREAT AMERICAN ASSURANCE COMPANY,
THE PROVIDENCE WASHINGTON INSURANCE COMPANY,
and CAMBRIDGE MUTUAL FIRE INSURANCE COMPANY,
Respondents

PETITION FOR WRIT OF CERTIORARI

To The United States Court of Appeals
For the Third Circuit

Allan C. Molotsky, Esquire
Barbara S. Magen, Esquire
POST & SCHELL, P.C.
1800 J.F.K. Boulevard
19th Floor
Philadelphia, PA 19103
(215) 587-1000
Attorneys for Petitioner

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

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QUESTIONS PRESENTED

1. Did the Court of Appeals disregard the dictates of the McCarran-Ferguson Act in not precluding a federal district court from exercising jurisdiction over an insolvent insurance company?

2. May a federal trial court continue to exercise jurisdiction over an insolvent insurance company when abstention is appropriate under the *Burford* and *Colorado River* doctrines?

Petitioner previously filed a disclosure of corporate affiliations and financial interests in its appeal to the United States Court of Appeals for the Third Circuit. There have been no changes since the time of this prior filing.

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OPINIONS BELOW

The Order of the Court of Appeals affirming the District Court's Order is not reported and is reproduced in the appendix. The Order and Opinion of the District Court is not reported and is reproduced in the appendix.

JURISDICTION

The judgment of the Court of Appeals was entered on February 24, 1987. The statute which confers jurisdiction on this Court to review the judgment is 28 U.S.C. §1254 (1).

STATUTES INVOLVED

Section 56-9-115 of the Tennessee Code provides:

> (a) Whenever under this chapter a receiver is to be appointed in delinquency proceedings for a domestic or alien insurer, the court shall appoint the commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the order of the court.
>
> (b) As a domiciliary receiver, the commissioner shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer, whenever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer . . .

Section 56-9-117 of the Tennessee Code provides, in pertinent part:

> (a) In a delinquency proceeding begun in this state against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

Section 1011 of Title 15 of the United States Code provides:

> The Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any

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barrier to the regulation or taxation of such business by the several States.

Section 1012 of Title 15 of the United States Code provides, in pertinent part:

> (a) State regulation. The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
>
> (b) Federal regulation. No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . .

REASONS WHY WRIT SHOULD ISSUE

The Third Circuit Court of Appeals has rendered a decision in serious conflict with the decisions of other Courts of Appeal, including the Second, Fourth, Seventh and Eighth Circuits, as well as with various Supreme Court decisions. Other Circuit Courts and this Court have all held that the trial court must refrain from exercising jurisdiction over an insurance company that is insolvent when state law requires that claims against an insolvent insurer must be brought in the state insolvency proceedings. Indeed, the decision of the Circuit Court is contrary to both *Burford v. Sun Oil Company*, 319 U.S. 315 (1943) and *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). This Court must exercise its discretionary review to ensure uniformity of the law among the various Circuit Courts as well as to ensure that the present question is decided in a manner not in conflict with the applicable decisions of this Court.

The Third Circuit has sanctioned a departure so far from the accepted usual course of judicial proceedings that this Court must exercise its power of supervision. A liquidation of an insurance company is rendered seriously inefficient if it cannot be conducted in a unified court proceeding. The District Court's continued exercise of jurisdiction is in direct contradiction to the dictates of the McCarran-Ferguson Act, 15 U.S.C. §§1011 et

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seq., and to those cases which hold that a District Court may not interfere with the operation of state insolvency proceedings.

STATEMENT OF THE CASE

Plaintiff Robert Rieder ("Rieder") filed a diversity action against the Cherokee Insurance Company ("Cherokee") and other Defendants seeking a declaratory judgment requiring Cherokee and the other insurance companies to defend and indemnify him in connection with three lawsuits in the Superior Court of New Jersey. Those lawsuits allege that Rieder is liable for a fire that occurred on November 23, 1980 at the Twin Bridge Apartment Complex ("Complex") in Carney's Point, New Jersey. Rieder purchased the ground upon which the Complex is located in 1969 and constructed the Complex in 1972. He operated and managed it after its construction until 1976 when he sold the property.

Cherokee had issued two separate liability insurance policies to Rieder covering the period from May 1, 1979 to May 1, 1982 under policy no. SMP-19456, which specifically described property in New Castle, Delaware, and policy no. GL-32211, which specifically described property in Feasterville, Bucks County, Pennsylvania. Cherokee did not insure any property in New Jersey since it was not licensed to write insurance in that state.

Subsequent to the institution of this litigation, Cherokee became insolvent and was placed into receivership pursuant to the insurance rehabilitation laws of Tennessee on July 16, 1984. (App A-19). Under Tennessee law, all assets of an insolvent insurance company are placed in the possession of a court-appointed receiver. Tenn. Code §56-9-115. As required under Tennessee law, which provides that claims against an insolvent insurer must be brought in the state insolvency proceedings, Tenn. Code §56-9-117, the Tennessee Chancery Court issued the following order: "All policyholders, creditors, and claimants of Respondent Cherokee are hereby enjoined and restrained from asserting any claim against Respondent Cherokee except in these receivership proceedings." (App. A-15). Prior to entering

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receivership, Cherokee had issued insurance policies in some thirty states. There were approximately 1,900 claims pending at petitioner's home office in Tennessee. Under the Rehabilitation Plan, it was anticipated that payment of valid policyholder and third-party liability claims would be made using the liquid assets available to the court-appointed Rehabilitator. (App. A-8, 9).

Despite the institution of the receivership proceedings in state court, the district court refused to stay the trial of this lawsuit.

ARGUMENT

I. THE DICTATES OF THE MCCARRAN-FERGUSON ACT PRECLUDE A FEDERAL DISTRICT COURT FROM EXERCISING JURISDICTION OVER AN INSOLVENT INSURANCE COMPANY

The McCarran-Ferguson Act, 15 U.S.C. §§1011 et seq., clearly sets forth an express federal policy of noninterference in insurance matters and a Congressional mandate that regulation of the insurance industry be left to the individual states. *Universal Marine Insurance Co., Ltd. v. Beacon Insurance Co.*, 768 F.2d 84 (4th Cir. 1985); *Washburn v. Corcoran*, 643 F. Supp. 554 (S.D.N.Y 1986). The Act provides specifically:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . .

15 U.S.C. §1012 (b).

It is apparent that through this legislation Congress chose to "give support to the existing and future state systems for regulating and taxing the business of insurance" and "to throw the whole weight of its power behind the state systems." *Prudential Life Insurance Company v. Benjamin*, 328 U.S. 408, 429-430 (1946); *Allstate Insurance Company v. Lanier*, 361 F.2d 870, 873 (4th Cir.), *cert. den.*, 385 U.S. 930 (1966). "It is the express purpose of McCarran-Ferguson to override federal statutes not expressly directed to insurance matters that would impair the autonomy of states in dealing with the regulation of insurance." *Washburn, supra*, 643 F. Supp. at 557.

The intention of Congress, demonstrated by the McCarran-Ferguson Act, was to give broad support to the existing state systems for regulating the business of insurance. As this Court has stated, this support was provided in two ways:

> One was by removing obstructions which might be thought to flow from its own power, whether dormant or exercised, except as otherwise expressly provided in the act itself or in future legislation. The other was by declaring

> expressly and affirmatively that continued state regulation . . . is in the public interest and that the business and all who engage in it 'shall be subject to' the laws of the several states in these respects.
>
> . . . Congress must have had full knowledge of the nation-wide existence of state systems of regulations and taxation; of the fact that they differ greatly in the scope and character of the regulations imposed and of the taxes enacted; and of the further fact that many, if not all, include features which, to some extent, have not been applied generally to other interstate business. Congress could not have been unacquainted with these facts and its purpose was evidently to throw the whole weight of its power behind the state systems, notwithstanding these variations.

Prudential Life Insurance Company, supra, 328 U.S. at 429, 430.

The policies and purposes underlying the McCarran-Ferguson Act cannot be disregarded. The liquidation or rehabilitation of an insolvent insurer is simply a matter of state law which is properly to be handled through the court-appointed liquidator in state court. *Washburn v. Corcoran*, 643 F. Supp. 554 (S.D.N.Y. 1986); *Levy v. Lewis*, 635 F.2d 960 (2nd Cir. 1980); *Blackhawk Heating and Plumbing Company, Inc. v. Geeslin*, 530 F.2d 154 (7th Cir. 1976); *Motlow v. Southern Holding and Securities Corp.*, 95 F.2d 721 (8th Cir.) *cert. den.*, 305 U.S. 609 (1938); *Sears, Roebuck and Co. v. Northumberland General Ins. Co.*, 617 F. Supp. 88 (N.D. Ill. 1985); *Twin City Bank v. Mutual Fire Marine & Inland Ins. Co.*, 646 F. Supp. 1139 (S.D.N.Y. 1986).

A federal court must surrender its jurisdiction in favor of a state court when the property in question is subject to the jurisdiction of the state court's insolvency proceedings. *Pennsylvania v. Williams*, 294 U.S. 176 (1935). The fact that the federal action may have commenced prior to the state insolvency proceedings does not change the required result. *Id.*

The Seventh Circuit has well-explained the rationale for refusing to exercise jurisdiction over an insolvent insurer.

> The states have a paramount interest in seeing that liquidation proceedings conducted by court-appointed liquidators and overseen by their courts are free from the interference of outside agencies. This interest is of even greater importance when the company undergoing liquidation is a domestic insurance company or other financial institution. The interest of the company's owners, policyholders, and creditors, as well as the public, are best served and protected by an orderly and efficient process of liquidation. The liquidation of the carrier is best left to a proceeding which will settle all of its affairs and dispose of all its property. Federal courts should refrain from deciding select issues confronting another court in pending proceedings.

Blackhawk Heating and Plumbing Company, Inc. v. Geeslin, supra, 530 F.2d at 159 (citations omitted). In the instant case, it is clearly up to the State of Tennessee to determine the priority of claims in light of that State's statutory framework for insolvent insurance companies. *See Neff v. Pine Top Insurance Company,* 704 S.W.2d 1 (Tenn. 1986).

This Court has time and time again made reference to and upheld the McCarran-Ferguson Act with the result of allowing state courts their autonomy involving matters of insurance. *Pilot Life Insurance Company v. Dedeaux,* 107 S. Ct. 1549 (1987); *Metropolitan Life Insurance Company v. Massachusetts,* 471 U.S. 724 (1985). The rationale underlying that Act was, *inter alia,* to "ensure that the States would continue to have the ability to tax and regulate the business of insurance." *Group Life & Health Insurance Co. v. Royal Drug Co.,* 440 U.S. 205, 217-218 (1979). There are no exceptions in the case *sub judice* which could be construed to alter, modify or invalidate the application of said Act and its undeniable support of state court jurisdiction in the instant matter. The concern of the state, as applied to the facts in this case, is fundamental and must be left undisturbed in order to reaffirm the policies and purposes behind the McCarran-Ferguson Act, as this Court has done since its enactment, to exempt the insurance industry from federal court restriction.

Thus, it is well-established that the insurance industry is regulated by state law, and the federal court system should not interfere with the operation of state insolvency proceedings. *Universal Marine Insurance Company, Ltd., supra*. In *Universal Marine Insurance Company, Ltd., supra*, an insurer brought an action seeking to impose a constructive trust on funds payable to other insurance companies. In holding that the district court must surrender jurisdiction to the state insolvency proceedings, the court noted:

> In this case, U.M.I.C. asks this court to invoke its equity powers to impose a constructive trust on funds within the jurisdiction of the Tennessee and North Carolina state courts. *This court is without jurisdiction to so interfere with the operation of state insolvency proceedings*. U.M.I.C.'s claims against Cherokee and Beacon can be properly adjudicated in the state court proceedings . . . This is simply a hard fact of life which equally effects all creditors of an insolvent company. This court is not entitled to effectively order the state courts to allow U.M.I.C. to go to the front of the line.

Universal Marine Insurance Company, Ltd., supra, 768 F.2d at 88 (citations omitted) (emphasis added).

The importance of the *Universal Marine Insurance Company, Ltd.* decision cannot be over-emphasized. It squarely addresses a factual scenario, similar to the present case, in its direct concern with state insolvency proceedings. Furthermore, it points out that where state law issues presented by the action are clear, it is inappropriate for the federal court to maintain jurisdiction. Undeniably, a federal court ruling would have a broad impact on state policy with a wide-ranging effect on a matter that is essentially one to be left to state affairs. Federal judiciary intervention would be diametrically opposed to the otherwise desired harmony between federal and state courts. Matters concerning insurance litigation and insolvency proceedings are ones where the state has a particularly strong interest. Involvement by the federal courts would impair state attempts to deal effectively with matters of state concern. The nation as a whole

has an interest in allowing states to develop and enforce their own policies, especially where states have set up regulatory schemes which traditionally handle specific areas within the province of the state. Federal review would entail a reconsideration of the state administrative decisions, resulting in the creation of inequities in the administration of the state scheme. Hence, restraint is mandated on the part of the federal court. *See Corcoran v. Ardra Insurance Company, Ltd.*, No. 85 Civ. 6304 (S.D.N.Y April 16, 1987).

Indeed, the great majority of states have subscribed to this same principle by enacting the Uniform Reciprocal Liquidation Act. When a liquidation proceeding is commenced in a reciprocal state involving an insurer domiciled in the reciprocal state, controverted claims against the insurer by Pennsylvania resident claimants may be made in Pennsylvania if there is a parallel or ancillary proceeding being conducted in Pennsylvania. If no such ancillary proceeding is pending in Pennsylvania, and there is none is this case, the claim must then be proven in Tennessee where petitioner is domiciled since both Tennessee, Tenn. Code §56-9-101, and Pennsylvania, *Twin City Bank, supra*, are reciprocal states under that Act.

In sum, the state court stands in the best position to determine issues involving insurance, insolvency, and liquidation proceedings. There are undeniably serious public policy matters concerned in liquidation proceedings as such a proceeding involves the adjustment of thousands of claims against an insurer by a variety of claimants, demanding the marshalling of existing assets of the insolvent company and the reinsuring of existing policies. These factors only serve to highlight the necessity of state statutory schemes in order to regulate the liquidation of insolvent insurers. The importance of consolidating all of the assets of an insolvent company, and gathering all of those who have claims against those assets in a single forum is paramount. Experience demonstrates that it is essential to entrust the management of such proceedings to the supervision of one court in order to ensure an economical, efficient and orderly liquidation of assets. Hence, the federal court must surrender jurisdiction.

II. THE TRIAL COURT COMMITTED AN ERROR OF LAW BY CONTINUING TO EXERCISE JURISDICTION OVER AN INSOLVENT INSURANCE COMPANY WHEN ABSTENTION WAS APPROPRIATE

Long-standing principles of abstention require that this Court reverse the lower courts and dismiss the declaratory judgment action in accordance with this Court's decision in *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). The existence of Tennessee's complex mechanism for deciding claims against an insolvent insurance company militates against federal court intervention.

Burford, supra, was an action to enjoin the enforcement of an administrative order of a Texas state commission permitting the drilling of certain oil wells. Although the action was before the federal court based on both diversity and federal question jurisdiction, the federal court was being asked to interpret and apply Texas law. It was recognized that the exercise of federal jurisdiction in such a circumstance would result in confusion regarding the laws of the state of Texas. Resultingly, the Court held that respect for the independence of state actions required the federal court to stay its proceeding. In arriving at this determination, the *Burford* court listed two factors which specifically justified abstention. First, it was apparent that the presence of a complex state regulatory system, governing a subject matter in which the state had a great interest, would be disrupted by federal court review. In addition, abstention was justified due to the existence of a state-created forum with specialized knowledge in the area being litigated.

As in *Burford,* the instant case involves complex issues of state law involving an insolvent insurer. A federal resolution of these issues would be disruptive to state efforts to establish and maintain a coherent policy with respect to a matter of substantial public concern.

The principle enunciated in *Burford* has been consistently followed by the federal court system. *Law Enforcement Insurance Company, Ltd. v. Corcoran,* 807 F.2d 38 (2nd Cir. 1986).

In *Law Enforcement Insurance Company, Ltd., supra,* an insurer sought a declaratory judgment regarding its contract rights against an insurance company which was in liquidation. The trial court dismissed the action, deferring to state liquidation proceedings. The Court of Appeals thereafter held that abstention was warranted under the *Burford* doctrine in light of New York's comprehensive plan of regulation of insurance companies and the unified method for granting or disallowing claims against an insolvent insurance company. As the Circuit Court noted:

> New York has set up a comprehensive plan of regulation of insurance companies, with particularly detailed provisions concerning their rehabilitation and liquidation. In doing so, New York has legislated on a matter of special state concern — so declared by the federal McCarran-Ferguson Act, 15 U.S.C. §1011-15.
>
> The New York courts have long been active partners in the state's regulatory plan. Not only have they on a number of occasions reviewed in considerable detail the propriety of liquidators' decisions to grant or disallow claims, they have implemented the state's policy of unified adjudication by requiring all claims and challenges to be centralized in the court supervising the liquidation or rehabilitation. Indeed, that is the purpose of injunctions such as the one the liquidation court entered here. And while we do not read that injunction as barring this action of its own force, we do give it weight as an expression of state policy.
>
> More significantly, the policy itself is an important one. As the court below recognized, the structure of the New York system serves the state's strong interest in centralizing claims against an insolvent insurer into a single forum where they can be efficiently and consistently disposed of.

Law Enforcement Insurance Company, Ltd., supra, 807 F.2d at 43, 44 (citations omitted).

It is apparent that the same rationale should apply in the instant matter since Tennessee has implemented the same type of regulatory scheme for insolvent insurance companies. Federal

courts have typically abstained where state regulation involved matters of substantial state concern, such as insolvent insurers, and where state policies were carried out in a statutorily established regulatory program by state officials. "Most important for our purposes, *Burford* abstention has been applied to state regulation of insurance." *Levy v. Lewis, supra,* 635 F.2d at 963.

In *Levy, supra,* a class action was brought on the ground that the termination of retirement benefits of former employees of an insurance company by the New York State Superintendent of Insurance, acting under authority of state court orders, constituted both a breach of fiduciary duty and violation of an employee welfare benefit plan under the Employee Retirement Income Security Act. The Court of Appeals held that sound judicial administration required federal courts to abstain from exercising concurrent jurisdiction. Abstention would prevent duplicate litigation in state and federal forums, enable the Superintendent of Insurance to consolidate all claims against the insolvent insurance company and would promote the federal policy of leaving regulation of insurance matters to the states. The court specifically noted that the administrative and judicial scheme established by New York State in order to regulate insurance companies, including provisions enabling the institution and implementation of liquidation proceedings, operates pursuant to and in accordance with an express federal policy of noninterference in matters concerning insurance. Therefore, the federal courts do not encourage the interruption of such state schemes, especially where the federal court action would impinge upon an area in which Congress has recognized the predominent interest of the states. In addition, the court specifically addressed the issue with regard to liquidation and insolvency proceedings.

> (T)he liquidation process would be greatly impeded by subjecting it to two authorities. . .
>
> Experience has demonstrated that, in order to serve an economical, efficient, and orderly distribution of the assets of an insolvent corporation for the benefit of all creditors and

> stockholders, it is essential that the title, custody, and control of the assets be entrusted to a single management under the supervision of one court.

Levy, supra, 635 F.2d at 964 (citations omitted).

The consolidation of all claims into a single insolvency proceeding benefits all parties. Where state insurance company liquidation proceedings are at issue, concerns with comity, and with the state's enforcement of important state interests in its own courts, have direct application. Here, the parties to the proceeding seek an adjudication in state court in furtherance of the regulatory duties left to state courts by Congress. Certainly, consideration of judicial administration alone, in complex proceedings such as this, justifies abstention.

In the instant case, petitioner issued insurance policies in approximately thirty states. There are over 1,900 claims pending at petitioner's home office in Tennessee. Under the Rehabilitation Plan, it was anticipated that payment of valid policyholder and third-party liability claims would be made using the liquid assets available to the court-appointed Rehabilitator. (App. A-8,9). Tennessee, as required under statute, has sought to consolidate all of the assets of Cherokee and gather all of those who have claims against those assets in a single forum. It is up to the court-appointed Rehabilitator to grant or disallow claims and to make a determination as to whether full payment of a claim may be made. Rieder's action is nothing more than an attempt to circumvent this procedure and obtain a place of priority over other creditors. To allow Rieder to set such a precedent serves to encourage other creditors to step out of line and pursue their litigation against Cherokee in federal court. That action will result in Cherokee expending more resources to defend itself in other jurisdictions, leaving less of an estate to pay valid policyholder claims. Such duplication not only overburdens the Insurance Company and its policyholders and creditors, but also the entire judicial system.

In 1976, this Court addressed the issue of abstention as grounded in "principles unrelated to considerations of proper constitutional adjudication and regard for federal-state relations

which govern in situations involving the contemperaneous exercise of concurrent jurisdiction, either by federal courts or by state and federal courts." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). This doctrine was the principle of "(w)ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Colorado River Water Conservation District, supra*, 424 U.S. at 813.

In *Colorado River*, the United States government brought an action in a federal district court seeking a determination of its rights in certain waters of the Colorado River. Subsequently, one of the defendants in the federal lawsuit filed an action in Colorado state court seeking a determination of all federal government rights in Colorado waters, including claims filed in other state water divisions. This court ruled that the judgment of the district court, which dismissed the federal action on the ground that the abstention doctrine required it to defer to the parallel state proceeding, should be affirmed.

In its opinion, this Court made note of three circumstances where abstention was deemed appropriate.

> (a) abstention is appropriate in cases presenting a federal constitutional issue which might be mooted or presented in a different posture by a state court determination of pertinent state law. . .
>
> (b) abstention is also appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar. . . .
>
> (c) finally, abstention is appropriate where, absent bad faith, harrassment, or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceedings, . . .

Colorado River, 424 U.S. at 814-16.

Following the delineation of each of the foregoing circumstances, this Court noted that *Colorado River* did not fall within any of the previously recognized abstention categories. Hence,

a fourth category was created providing a federal court with the ability to decline to exercise jurisdiction in deference to a state proceeding where an order to the parties to proceed in state court, as opposed to federal court, would serve important interests. Although this Court failed to squarely set forth a concrete rule for when such circumstances are present, it did address four factors relevant to the decision one of which, the desirability of avoiding piecemeal litigation in two court systems, is especially applicable to the instant matter. In applying these considerations to litigation involving concurrent jurisdiction of Colorado water rights, the Court found that the federal policy to avoid piecemeal litigation of water rights mandated a deference to state adjudication.

In the instant case, the danger of piecemeal litigation, with 1,900 claims in approximately thirty states, is all too obvious, giving this Court a compelling reason to accept this Petition and reverse the lower courts. Only by the federal court abstaining can the principles of *Colorado River* be upheld.

It is apparent that in the instant case, as in *Colorado River, supra,* the central battleground for the issue involved is state law. There is no need for exclusive federal jurisdiction and the state's interest in a concise and coherent presentation of policy in the area of insurance law is a vital state and local concern which would be adversely effected were the federal courts to maintain jurisdiction in this case. The mere possibility of conflicting decisions and duplicative litigation makes a stay appropriate for these proceedings. Furthermore, due to considerations of comity apparent in this case, it is desirable to have a state court resolve the complex questions of state law, as the state court has the greatest interest in policy-making. To do otherwise would be to destroy the coherent regulation of insurance companies and to preclude a uniform method for consolidation of claims against an insolvent insurance company. Surely, this is exactly what the *Colorado River* doctrine attempts to protect by requiring a federal court to abstain from jurisdiction.

Furthermore, the trial court's refusal to grant the stay, since the suit involved contract rights rather than a money judgment, is a difference without distinction. This Court has long since

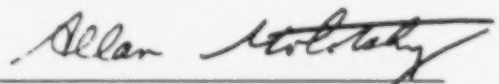
eliminated the distinctions between *in personam* and *in rem* jurisdiction. *Shaffer v. Heitner*, 433 U.S. 186 (1977). Whether Rieder's suit is viewed as an *in rem* proceeding or whether it is viewed as an *in personam* action, which interferes with the state court's *in rem* liquidation proceedings, the result is the same. This Court must defer to the state court proceedings to avoid the "unseemly and disastrous conflicts" which would arise if the federal district court issued rulings concerning contract rights which involve property in the possession of the court-appointed Rehabilitator. *Metropolitan Life Ins. Co. v. Board of Directors of Wis. Ins. Security Fund*, 572 F. Supp. 460 (W.D. Wis. 1983); *Aims Enterprises, Inc. v. Muir*, 609 F. Supp. 257 (M.D. Pa. 1985); *Levy v. Lewis, supra*. The foregoing principle has been made clear by Circuit Judge Kaufman in *Law Enforcement Ins. Co., Ltd., supra*, where an insurer brought a declaratory judgment action regarding contract rights against an insurance company in litigation. "(T)he structure of the (state) system serves the state's strong interest in centralizing claims against an insolvent insurer into a single forum where they can be efficiently and consistently disposed of." *Id.*, 807 F.2d at 144.

CONCLUSION

Both the District Court and the Circuit Court chose to disregard the express federal policy of noninterference in insurance matters and, in particular, to disregard the McCarran-Ferguson Act, which gives states exclusive control over regulation and liquidation of insurance companies. In addition, the failure of the lower courts to abstain cannot be countenanced, in light of the *Burford* and *Colorado River* doctrines.

Accordingly, petitioner prays this Court to grant the Writ.

Respectfully Submitted,
POST & SCHELL, P.C.



ALLAN C. MOLOTSKY, ESQUIRE
BARBARA S. MAGEN, ESQUIRE
Attorneys for Petitioner,
Cherokee Insurance Company

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 83-2720

ROBERT M. RIEDER

v.

CHEROKEE INSURANCE COMPANY, et al.

MEMORANDUM

BRODERICK, J. March 7, 1986

On the day trial was scheduled to commence, the defendant, Cherokee Insurance Company (Cherokee), advised the Court that an Order had been issued by the Chancery Court of Tennessee enjoining all persons within the jurisdiction of the Tennessee court from commencing or further pursuing any action in law or in equity against Cherokee. The trial which was scheduled to begin on January 6, 1986 was continued for other reasons and Cherokee filed a petition for a stay of these proceedings. Counsel in his petition states that he did not learn of the Order of the Tennessee Chancery Court until January 2, 1986, although a copy of the Order which counsel has submitted to this Court indicates that it was filed in the Chancery Court of Tennessee on July 16, 1984.

The plaintiff, Robert M. Rieder (Rieder), filed his complaint in this Court on June 8, 1983. Plaintiff in this action is seeking a declaratory judgment requiring the Cherokee Insurance Company to defend and indemnify him in connection with actions in which he is being sued in the Superior Court of New Jersey by tenants and owners of the Twin Bridge Apartment Complex in Carneys Point, New Jersey. The plaintiffs in the New Jersey action claim that Rieder's negligent and defective design, planning, and construction of the apartment complex were the cause

of a fire at the complex on November 23, 1980. On December 6, 1985 this Court entered an Order denying Cherokee's motion for summary judgment, and scheduled the case for trial. Cherokee is urging this Court to stay the instant action on the basis of comity for the duration of the state court's injunction. For the reasons hereinafter set forth, this Court will deny the stay.

As heretofore pointed out, the complaint in this matter was filed on June 8, 1983. After discovery was completed, Cherokee filed its motion for summary judgment which this Court denied on December 6, 1985. This Court, in the interest of comity, has on occasion granted a stay for a reasonable period of time in actions where a state court has enjoined actions against an insurance company. The circumstances in this case, however, have stretched comity beyond the breaking point.

This court has determined to deny the stay in this case for the following reasons: (a) this action was instituted about a year before the Tennessee court entered a consent order of rehabilitation enjoining and restraining all persons from instituting, prosecuting or proceeding in any suit against Cherokee; (b) it was not until this Court denied Cherokee's motion for summary judgment and the trial on the merits was scheduled did counsel for Cherokee advise the Court of the Tennessee court's injunction; (c) this action is a declaratory judgment action concerning policy coverage and judgment will not be a money judgment; and (d) the United States District Court for the Western District of North Carolina in the case of *Universal Marine Insurance Co., Ltd. v. Beacon Ins. Co.*, 592 F. Supp. 945, 947 (1984), in addressing the validity of the orders concerning Cherokee issued by the Tennessee Chancery Court, stated:

> . . . it is "well-established" that a state court cannot validly enjoin an *in personam* action in federal court. *Donovan v. City of Dallas*, 377 U.S. 408, 412, 84 S.Ct. 1579, 1582, 12 L.Ed.2d 409 (1964). The fact that the injunction is addressed to the parties rather than the Court does not alter the invalidity of the injunction. *Id.* The Court is, therefore, of the opinion that the Tennessee State Court

is completely without authority to issue a valid order hindering, directly or indirectly, the arbitration previously ordered by this Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 83-2720

ROBERT M. RIEDER

v.

CHEROKEE INSURANCE COMPANY et al.

ORDER

AND NOW, this 7th day of March, 1986, upon consideration of the petition for a stay filed by Cherokee Insurance Company, for the reasons set forth in this Court's Memorandum of March 7th, 1986,

IT IS ORDERED that the petition for a stay of proceedings in federal court filed by Cherokee Insurance Company is DENIED.

RAYMOND J. BRODERICK, J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 86-1387

ROBERT M. RIEDER

v.

CHEROKEE INSURANCE COMPANY,
GREAT AMERICAN ASSURANCE COMPANY,
THE PROVIDENCE WASHINGTON INSURANCE COMPANY and
CAMBRIDGE MUTUAL FIRE INSURANCE COMPANY
Appellants

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D. C. Civil No. 83-2720)
District Judge: Raymond J. Broderick

Submitted Under Third Circuit Rule 12(6)
February 19, 1987
Before: HIGGINBOTHAM, SLOVITER, *Circuit Judges*
and ROTH, *District Judge**

JUDGMENT ORDER

After consideration of the contentions raised by appellants, it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against the appellants.

By the Court,

_____

Circuit Judge

February 24, 1987

ATTEST:
Sally Mrvos, Clerk

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* Hon. Jane R. Roth, United States District Court for the District of Delaware, sitting by designation.

IN THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

NO. 84-1460-III

JOHN C. NEFF, Commissioner of Commerce and Insurance for the State of Tennessee,

Petitioner

v.

CHEROKEE INSURANCE COMPANY,

Respondent.

INTERIM PLAN OF REHABILITATION

1. The following Interim Plan of Rehabilitation is filed by Special Deputy Commissioner Horace E. Gaddis, Jr. ("Rehabilitator"), for Cherokee Insurance Company (Cherokee):

(A) Payment of necessary expenses of the Rehabilitator, including office expenses and salaries of employees, rental of computer and other necessary equipment, office space, and the cost of ceded reinsurance already in effect, other than reinsurance ceded to Universal Marine Insurance Company; and

(B) Payment of policyholder and third party liability claims (Class 3 Claims under T.C.A. §56-9-127), including necessary adjustment service and attorney's fees for services rendered in connection therewithin; and

(C) The return of unearned premiums on cancelled policies (Class 4 claims under T.C.A. §56-9-127).

It is anticipated that the above three items can be accomplished using the liquid assets available to the Rehabilitator.

2. Presently the expenses of keeping open the home office of the Company are running approximately $250,000 per month. Based upon the review of the Rehabilitator, these expenses

could be reduced approximately $100,000 per month in a short period of time.

3. Based upon the Rehabilitator's estimate, the amount necessary to liquidate all policyholder and third party liability claims totals $11,764,427.01 on July 20, 1984, including adjustment expenses. Presently, there are 300 to 350 claims in litigation. It is believed that these claims will ultimately settle for substantially less than the amount claimed.

4. Cherokee's claimed asset of $2,456,125.87 for agents' balances is included with Cherokee's liquid assets. Agents' balances consist of amounts due Cherokee from agents for premiums on policies written prior to the order of rehabilitation. Most, if not all, of this amount will be recovered by offsetting return premiums due agents for policyholders who have cancelled against the agents' balances, the agents' unearned commissions due the company, and the use of "short rate" cancellations where applicable. It is anticipated that most policyholders will cancel their policies with Cherokee due to it being placed in rehabilitation.

5. The only undetermined liability which is impossible to estimate at this time is the amount of liability Cherokee may have under reinsurance agreements which it has reached with other insurers.

6. Assuming this plan is acceptable, Cherokee would immediately resume the following normal claim procedure:

STANDARD CLAIM PROCEDURE

Cherokee writes standard property and casualty business in approximately 30 states. However, the majority of the Cherokee business is concentrated in the following states: Tennessee, Mississippi, North Carolina, Georgia, South Carolina, Virginia, District of Columbia and Maryland. As such, the pending claims for the company are concentrated in these areas.

Cherokee's book of business is generated by the efforts of approximately 100 independent agents located in the above-referenced states. When a loss occurs, the policyholder reports

the occurrence to the producing agent. Each agent has instructions which authorize him to engage (on behalf of Cherokee) the services of an *approved* independent adjuster in the given area.

Many of the Cherokee claims are property losses which relate to physical damage to real property (dwellings, apartments, retail stores, motels, and so forth) caused by fire, lightning, windstorm, hail, and other unforeseen perils. In addition many of Cherokee's pending claims are third party losses where a third party is presenting a bodily injury or property damage claim against one of Cherokee's policyholders alleging negligence/breach of duty. Obviously, many of these third party claims ultimately result in defending litigation on behalf of the defendant/policyholder.

At the present time, there are approximately 1,900 cases pending at Cherokee's home office in Nashville. Cherokee has no branch offices and all supervision of files is under the direction of the claim department of the home office. During the calendar year 1984, claim checks in the approximate amount of $1,000,000 have been processed each month through the Nashville office.

Cherokee does not employ any staff adjusters. As mentioned above, all claims are investigated, evaluated and concluded by independent adjusters under the supervision of home office claim staff. These independent adjusters report directly to the Nashville office and make settlement recommendations. Once approved, these independent adjusters assist the named insured with filing appropriate sworn proofs of loss as is required by the policy of insurance. Upon acceptance of the properly filed documents, final payment is issued from Nashville at the direction of one of the claim supervisors.

As to casualty/third party claims, independent adjusters in the field investigate the claim to determine the extent of liability exposure. Additionally, the adjusters evaluate the seriousness of the claim as to the nature of the injury or the extent of the property damage. Once the adjuster has completed his investigation/evaluation, his recommendations are transmitted to Cherokee's claim office in Nashville. Ultimately, third party settlements are negotiated by the adjusters in the field subject to the authority given them by home office supervisors. A certain

number of these third party claims result in litigation. As to these files, the company supervisors in Nashville engage certain defense attorneys to represent the interest of the named insured in the respective geographical areas for which the company does business. When a claim does result in litigation, the supervision of the case is under the direct control of the company claims manager. All legal proceedings are monitored from the Nashville office.

From an accounting standpoint, reserves are calculated by supervisors at the Nashville office. Supervisors evaluate each case and estimate what the company will ultimately have to pay out on the claim and a book entry is made for that amount. This reserving function thus becomes an integral part of the company's financial statements.

Claims supervisors at the Nashville office handle all reinsurance reporting and collection of recoveries from the various reinsurance treaties which are maintained by Cherokee.

7. The resolution of all Class 3 claims and the refund of unearned premiums to policyholders will result in a run-off of all of Cherokee's business under, and directly relating to, policies of insurance.

8. Remaining claims will stem from contracts and agreements of reinsurance. The Rehabilitator would use the assets remaining after payment of claims of policyholders, the refund of unearned premiums and payment of administrative expenses to fund the litigation necessary concerning disputes arising from reinsurance agreements in order to determine all liabilities of Cherokee to the remaining general creditors under T.C.A. §56-9-127(5). At the conclusion of all reinsurance litigation, it will be possible to make a final determination as to payments owed by Cherokee to other insurers under all existing reinsurance contracts. At that time, a decision would be made either that the company could be completely rehabilitated, or that due to its reinsurance obligations, a liquidation would be required.

9. As stated above, the Rehabilitator is not able at this time to estimate the amount of liability which Cherokee may have under reinsurance agreements with Beacon and with other insurers. This Interim Plan of Rehabilitation is intended to provide

for the payment of policyholder and third-party liability claims and the return of unearned premiums on cancelled policies for Cherokee's direct insurance business, as opposed to its reinsurance business. This Interim Plan of Rehabilitation should not be construed to pertain to the reinsurance agreements which Cherokee has entered into with Beacon and with other insurers, including, but in no way limited to, the reinsurance which is the subject of litigation in North Carolina.

10. In the event that it is considered necessary to resolve the reinsurance contract issues and possible claims by reinsurers prior to making any claim payments, it is the opinion of the Rehabilitator that it will be necessary to liquidate rather than rehabilitate this company.

Respectfully submitted,

W. J. MICHAEL CODY
Attorney General and Reporter
for the State of Tennessee

KATE EYLER
Assistant Attorney General
450 James Robertson Parkway
Nashville, Tennessee 37219
Phone: (615) 741-2250

IN THE MATTER OF THE
REHABILITATION OF
CHEROKEE INSURANCE COMPANY

ORDER

In accordance with the authority vested in me by the Order of Temporary Injunction and Appointment of Receiver for Purposes of Rehabilitation entered in the Chancery Court for Davidson County, Tennessee on July 17, 1984, in the cause styled JOHN C. NEFF, COMMISSIONER OF COMMERCE AND INSURANCE OF THE STATE OF TENNESSEE, V. CHEROKEE INSURANCE COMPANY, being Rule No. 84-1460-III, wherein the court appointed me, John C. Neff, Commissioner of Commerce and Insurance for the State of Tennessee, as Rehabilitator of the defendant, Cherokee Insurance Company and authorized me to take possession of all the property, rights of action, to conduct the business of the respondent, Cherokee Insurance Company and to do all things necessary to rehabilitate the defendant Company, I hereby appoint David S. Weed, as a special deputy commissioner, and as the substitute for the previously appointed special deputy commissioner Horace E. Gaddis, Jr., to act for and on my behalf, to carry out the orders of the Court entered in said cause on July 17, 1984, which in his judgment are necessary.

Effective this 9th day of August, 1984, at 9:00 a.m.

John C. Neiff
Commissioner
Department of Commerce & Insurance
State of Tennessee

IN THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

No. 84-1460-III

JOHN C. NEFF, Commissioner of
Commerce and Insurance for the
State of Tennessee,

Petitioner

v.

CHEROKEE INSURANCE COMPANY,

Respondent

ORDER OF TEMPORARY INJUNCTION AND APPOINTMENT OF RECEIVER FOR THE PURPOSES OF REHABILITATION

This cause came on to be heard the 16 day of July, 1984, upon the petition of John C. Neff, Commissioner of Commerce and Insurance for the State of Tennessee, for entry of a temporary injunction and for the appointment of himself as receiver of Cherokee Insurance Company (Cherokee), for the purpose of rehabilitation. It appears to the court that the parties have agreed to the entry of this order, as evidenced by the signatures of their counsel hereto. The court finds:

1. That Respondent Cherokee Insurance Company, is a corporation organized under the laws of the State of Tennessee, with its home office in Nashville, Tennessee.

2. That pursuant to T.C.A. §§56-9-105 and 56-9-106, the Commissioner of Commerce and Insurance for the State of Tennessee is authorized under the circumstances in this cause to apply to this court for the entry of an order granting a temporary injunction and appointing him, in his official capacity, as receiver for the purpose of rehabilitation of Respondent Cherokee.

3. That Cherokee has, through officers and board of directors, consented to the entry of this order and, by signature of its counsel hereto, has waived service of process.

It is, therefore, ORDERED, ADJUDGED and DECREED that John C. Neff, Commissioner of Commerce and Insurance for the State of Tennessee, is appointed receiver and is authorized and directed in that capacity to

A. Take immediate possession of all the property, assets, and estate, rights of action, and all other property of every kind whatsoever and wheresoever located belonging to Respondent Cherokee, including, but not limited to, all bank accounts, stock, bonds, debentures, mortgages, unearned commissions due and not paid, together with all furniture, fixtures, equipment and office supplies, and to hold all such assets pending further orders of this court.

B. Employ and authorize the compensation of a special deputy commissioner, legal counsel, accountants, clerks and such assistance as he deems necessary, and authorize the payment of the expenses of these proceedings and the necessary incidences thereof, as approved by the court, to be paid out of the funds or assets of the Respondent Cherokee in the possession of the receiver or coming into his possession.

C. To conduct the business of Respondent Cherokee, including but not limited to, temporarily suspending the issuance of all insurance contracts.

D. Not defend any legal action in which the Respondent Cherokee or any of its insureds is, or may become, a defendant commenced before or after the entry of the order appointing receiver if the receiver determines that to defend would be to the detriment of the estate.

E. Commence and maintain all legal actions necessary for the proper administration of this receivership proceeding.

F. Collect all debts which are economically feasible to collect which are due and owing Respondent Cherokee in Tennessee.

G. Discharge forthwith, if necessary, any and all officers, directors, attorneys, agents and employees, and all other persons representing Respondent Cherokee or employed by Respondent

Cherokee in connection with the conduct of its insurance business in this state.

H. Carry on such business of Respondent Cherokee as may be necessary, pending further orders of this court.

I. Apply to this court for further instructions in the discharge of his duties, and to apply for an order of liquidation, if such should be determined to be necessary.

It is further ORDERED, ADJUDGED and DECREED that:

J. All persons, firms, corporations and associations within the jurisdiction of this court, including, but not limited to, Respondent and its officers, directors, stockholders, agents and employees be, and they are hereby enjoined and restrained from the further transaction of the business of insurance, except as directed by the receiver, or dealing with or disposing of the property or assets of Respondent Cherokee, or doing or permitting to be done any action which might waste or dispose of the assets or allow or suffer the obtaining of judgments, attachments, writs of garnishment, or preferences or other liens or the making of any levy or execution against the receiver or Respondent Cherokee or its assets or any part thereof while said company is in the possession or control of the receiver and from interfering with the possession and control of the property of Respondent Cherokee by the receiver within the jurisdiction of this court.

K. All persons, corporations or associations within the jurisdiction of this court are hereby enjoined and restrained from commencing, or further prosecuting any action at law or in equity or any other proceedings, including but not limited to any arbitration proceedings, against Respondent Cherokee or the receiver, or from in any way interfering with the receiver in his possession or control of all assets of Respondent Cherokee within the jurisdiction of this court.

L. All policyholders, creditors and claimants of Respondent Cherokee are hereby enjoined and restrained from asserting any claim against Respondent Cherokee except in these receivership proceedings.

M. This court shall retain jurisdiction of this cause for the purpose of granting such other and further relief as shall be just and equitable.

N. No bond shall be required of the Commissioner as receiver in connection with this Order.

ENTER this day of July, 1984.

CHANCELLOR

APPROVED FOR ENTRY:

W. J. MICHAEL CODY
Attorney General & Reporter
for the State of Tennessee

Counsel for John C. Neff,
Commissioner of Commerce
and Insurance

THOMAS P. KANADY, JR.

Counsel for Cherokee
Insurance Company

IN THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

No.

JOHN NEFF, Commissioner of Insurance of the State of Tennessee,

Petitioner,

vs.

CHEROKEE INSURANCE COMPANY,

Respondent.

PETITIONER FOR ORDER OF REHABILITATION AND INJUNCTION

JOHN NEFF, Commissioner of Insurance, states as follows:

1. This Petition is filed pursuant to the provisions of Tennessee Code Annotated 56-9-106.

2. The Petitioner, John Neff, is the Commissioner of Insurance of the State of Tennessee.

3. The respondent, Cherokee Insurance Company ("Cherokee"), is a stock insurance company incorporated under the laws of the State of Tennessee and having its home office in Nashville, Davidson County, Tennessee. Cherokee is licensed and qualified to engage in, and is currently engaged in, the writing of property, fire, and casualty lines of insurance in the State of Tennessee, as well as in various other states.

4. Cherokee, through its stockholder, has requested and consented to rehabilitation and to the appointment of receiver under T.C.A. 56-9-106(8), of the General Statutes of Tennessee, as shown on the consent attached hereto as Exhibit A.

5. Petitioner is entitled to appointment as receiver under the provisions of T.C.A. 56-9-106.

WHEREFORE, petitioner prays the Court:

1. For an Order appointing John Neff, Commissioner of Insurance of the State of Tennessee, as receiver of Cherokee Insurance Company and directing him to rehabilitate said insurer; and directing the Commissioner forthwith to take possession of the property of the respondent and to conduct the business thereof, and to take such steps as may be necessary and appropriate toward removal of the causes and conditions that have made rehabilitation necessary; and

2. For an injunction restraining all persons, firms, and corporations, and others from interfering in any manner with the property or assets of the Cherokee Insurance Company or with the Commissioner in the exercise of his duties, and further enjoining and restraining them from instituting, prosecuting, or proceeding in any suit or other action of any kind or type against Cherokee or the Commissioner except by the permission of this Court:

3. For an injunction restraining Cherokee Insurance Company, its officers, directors, and stockholders, agents, and employees, and all other persons from disposing or materially impairing any of Cherokee's property or transacting any further business unless approved by the Commissioner or his agents or deputies until further order of this Court; and

4. For such other and further relief as to the Court may seem just and proper.

Respectfully submitted this day of July, 1984.

JOHN NEFF, Commissioner of Insurance of the State of Tennessee

IN THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

No.

JOHN NEFF, Commissioner of Insurance
of the State of Tennessee,

Petitioner,

v.

CHEROKEE INSURANCE COMPANY,

Respondent.

CONSENT ORDER OF REHABILITATION

This cause was heard before the undersigned Chancellor of the Chancery Court for Davidson County, Tennessee. From the petition filed herein and from statements made to this Court by representatives of the Department of Insurance and of Cherokee Insurance Company, the Court finds as follows:

1. Cherokee Insurance Company is a stock insurance company incorporated under the laws of the State of Tennessee and having its registered home office in Davidson County, Tennessee. Cherokee Insurance Company is duly licensed and qualified to engage in, and being currently engaged in, the writing of fire, property, and casualty lines of insurance in the State of Tennessee as well as various other states;

2. Cherokee Insurance Company has requested or consented to rehabilitation under Tennessee Code Annotated 56-9-106;

3. Good and sufficient cause exists justifying the appointment of a receiver for Cherokee Insurance Company and the interests of its policyholders, creditors, stockholders, and the public will best be served by an orderly rehabilitation of said insurer;

4. Under the provisions of T.C.A. 56-9-106, the petitioner, the Commissioner of Insurance of the State of Tennessee, should

be appointed receiver of Cherokee Insurance Company and directed to rehabilitate said insurer; and

5. The directors and stockholder of Cherokee Insurance Company consent to an order of rehabilitation pursuant to T.C.A. 56-9-106(8).

It is therefore, ORDERED, that:

1. John Neff, Commissioner of Insurance of the State of Tennessee is appointed receiver of Cherokee Insurance Company, and directed to rehabilitate said insurer;

2. The Commissioner is authorized, empowered, and directed forthwith to take into his possession and control the property, stocks, bonds, securities, moneys, books, papers, records, causes of action, and all other assets of any and all kinds and nature whatsoever belonging to the Cherokee Insurance Company to which the Commissioner may be entitled by virtue of the provisions of T.C.A. 56-9-101, et seq;

3. The Commissioner is authorized, empowered, and directed to take such steps as may be necessary to remove the causes and conditions that have made rehabilitation necessary; and the Commissioner is hereby vested with the duties, powers, authorities, and obligations provided by law;

4. All persons, firms, corporations, and others are hereby enjoined and restrained from interfering in any manner with the property or assets of the Cherokee Insurance Company or with the Commissioner in the exercise of his duties, and they are enjoined and restrained from instituting, prosecuting, or proceeding in any suit or other action of any kind or type against Cherokee or the Commissioner except by the permission of this Court;

5. The Commissioner is hereby authorized, empowered, and directed to incur such expenses for himself, his agents and/or attorneys as may be necessary in the proper administration of his duties as receiver, and also to incur such other expenses as receiver he may deem advisable or necessary in order properly to conduct and perform his statutory duties as receiver;

6. Cherokee Insurance Company, its officers, directors, stockholders, agents, employees, and all other persons are hereby enjoined and restrained from the disposition or material

impairment of any of Cherokee's property or the transaction of further business unless approved by the Commissioner or his agents or deputies until further order of the Court.

7. No bond shall be required of the Commissioner as receiver in connection with this Order.

This the day of July, 1984.

_____

CHANCELLOR

APPROVED FOR ENTRY:

JOHN NEFF, Commissioner of Insurance of the State of Tennessee

BY:_____

CHEROKEE INSURANCE COMPANY

BY:_____

ACCEPTANCE OF SERVICE

I, John Ryman, President of the Cherokee Insurance Company, do hereby accept service of the foregoing Consent Order of Rehabilitation on behalf of Cherokee Insurance Company and acknowledge receipt of a copy of the same.

This the day of July, 1984.

JOHN RYMAN, President
Cherokee Insurance Company

IN THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

No. 84-1460-III

JOHN C. NEFF, Commissioner of Commerce and Insurance for the State of Tennessee,

Petitioner,

v.

CHEROKEE INSURANCE COMPANY,

Respondent.

ORDER OF APPROVAL OF INTERIM PLAN OF REHABILITATION

This cause came on to be heard on the 8th day of August, 1984, upon the petition of Horace E. Gaddis, Jr., Special Deputy Commissioner for the purpose of rehabilitation of Cherokee Insurance Company for the entry of an order allowing for the immediate resumption of certain claim payments on behalf of Cherokee Insurance Company, and for approval of the Interim Plan for Rehabilitation. The Court finds:

1. That pursuant to T.C.A. § 56-9-111, the Receiver for Cherokee Insurance Company is authorized to take such steps toward the removal of causes and conditions which made rehabilitation necessary as the Court may direct; and

2. That the Interim Plan for Rehabilitation presented on behalf of Cherokee Insurance Company is in the best interest of the public, is in the best interest of the receivership because it would promote the conservation of the assets of the receivership estate, to the ultimate benefit of all claimants and interested persons, and would result in the only possibility of rehabilitation for Cherokee; and

3. The Court has been advised of the temporary restraining order issued by the United States District Court for the Western District of North Carolina in *Universal Marine v. Benson et al.*,

No. St-C-83-328-P, and the Court finds that the presentation of the Interim Plan of Rehabilitation and the approval of this Court of that Plan are not in conflict with that restraining order; and

4. That the Court should approve the Interim Plan of Rehabilitation and direct that it be implemented immediately. It is therefore

ORDERED, ADJUDGED AND DECREED that Special Deputy Commissioner Gaddis, acting on behalf of the Receiver for Cherokee Insurance Company, is directed to proceed immediately with the implementation of the Interim Plan and to report to the Court as soon as practicable with a Final Plan of Rehabilitation.

Entered the day of August, 1984.

ROBERT S. BRANDT
Chancellor

APPROVED FOR ENTRY:

W. J. MICHAEL CODY
Attorney General & Reporter
for the State of Tennessee

KATE EYLER
Assistant Attorney General

Counsel for John C. Neff,
Commissioner of Commerce
and Insurance and Receiver of
Cherokee Insurance Company